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## **Yevgeniy Pashukanis, his *Law and Marxism: A General Theory*, and the 1922 Treaty of Rapallo between Soviet Russia and Germany.**

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### **1. Introduction**

This paper explores the moment at which Soviet Russia (the USSR came into existence in December 1922) made its first and unexpected (as I explain below) step into international legal relations on 16 April 1922, the Treaty of Rapallo with Germany. Of particular interest to me is the role played, as a Legal Adviser, by Yevgeniy Pashukanis, who, in the West, has become the best known Soviet Marxist theorist of law. Pashukanis not only studied in Germany before WW I, but for several years after the War worked in the Soviet representation in Berlin, preparing his most famous work, *Law and Marxism: A General Theory. Towards a Critique of the Fundamental Juridical Concepts*, in Berlin from 1920 to 1923.<sup>1</sup>

I start with the context for the Treaty of Rapallo, followed by a more detailed account of the Treaty and its provisions, drawing on contemporary accounts. I then turn to Yevgeny Pashukanis, his background and pre-World War I studies in Germany. I analyse in unprecedented detail his central participation in the negotiation of the Treaty. I next turn to contemporary evaluation of the Treaty. Then I examine the more controversial question of the secret military agreement between Soviet Russia and Germany, whereby Germany was able to test new weapons and train military personnel secretly in Soviet Russia, contrary to the Versailles Treaty; and Soviet Russia gained the benefit of the latest German military technology. I trace the tragic trajectory of Pashukanis up to his murder by Stalin's regime, and conclude with an evaluation of the significance of the Treaty.

It is my own contention that the *General Theory* is not at all representative of Pashukanis's work as whole. With the exception of this text, Pashukanis was an orthodox Soviet legal scholar, adapting successfully, until he fell victim to Stalin's purges, to changes in the prevailing theoretical and ideological direction of the USSR. The book he prepared in Berlin in 1920-1921, completed in 1923 and published in the USSR in 1924 was, in my view, very

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<sup>1</sup> Ye Pashukanis (1924) *Общая теория права и марксизм. Опыт критики основных юридических понятий* (*Obshchaya teoriya prava i marksizm*) A general theory of law and Marxism. An attempt at a critique of fundamental juridical concepts) (Moscow: Communist Academy 1924) (English translation, Ye Pashukanis *Law and Marxism: A General Theory. Towards a Critique of the Fundamental Juridical Concepts* (London: Pluto Press, 1983))

much an engagement with German legal theory, Kelsen in particular – and perhaps even more interesting for that reason. I do not doubt that Pashukanis gave sound legal advice as a member of the small Soviet Russian delegation, and indeed, as I show below, he made a significant contribution to a wholly unanticipated diplomatic coup by Soviet Russia. And the Treaty between two defeated and to different extents pariah powers was of immense significance, not only for the immediate survival of Soviet Russia, and its gradual integration into the international legal order – the USSR joined the League of Nations on 18 September 1934 - but also for the subsequent trajectories of both countries.

## **2. Soviet Russia and Germany after World War I**

Both Germany and Soviet Russia found themselves isolated, diplomatically and economically, from the rest of the world. They were treated as pariahs.

The Treaty of Rapallo was unexpected, because Soviet Russia had only a few years previously capitulated ignominiously to Germany. On 3 March 1918, it concluded the Treaty of Brest-Litovsk with the Central Powers (Germany, Austria-Hungary, Bulgaria, and the Ottoman Empire), bringing an end to its engagement in World War I. Soviet Russia ceded the Russian Empire's Baltic provinces to Germany, and its province of Kars Oblast in the South Caucasus to the Ottoman Empire. Kars is to this day a city in Eastern Turkey. Soviet Russia also recognised the independence of Ukraine.<sup>2</sup>

However, in 1919, the Red Army defeated the White armed forces of South Russia in Ukraine, and the army led by Admiral Kolchak in Siberia. Final victory was achieved throughout Russia in 1922.

Despite victory in the Civil War, Soviet Russia was by no means secure on its Western borders. The Polish-Soviet War from late 1919<sup>3</sup> saw Polish and Ukrainian forces advancing far into Ukraine, and the Red Army suffered an unexpected defeat at the Battle of Warsaw in August 1920. Soviet Russia was obliged to initiate negotiations, and, on 18 March 1921 the Treaty of Riga divided disputed territories between Poland and Soviet Russia. In late 1921 the remains of the White forces commanded by Pyotr Wrangel were defeated in Crimea and evacuated in late 1920, although fighting continued in the east of Russia until 1922.

The Treaty of Versailles was imposed on a defeated Germany, and the creation of the League of Nations. It was signed on June 28, 1919, and under its terms a Secretary-General was

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<sup>2</sup> Dominic Lieven *Towards the Flame: Empire, War and the End of Tsarist Russia* (London: Penguin 2016)

<sup>3</sup> Norman Davies *White Eagle, Red Star: The Polish-Soviet War 1919-20* (London: Pimlico New Ed 2003)

named for the League, authorized to organize a permanent staff. By January 10, 1920, the necessary ratifications of the treaty had been deposited and the treaty, with the Covenant of the League contained in its first 26 articles, became operative. The First Assembly of the League met on 15 November 1920. Soviet Russia was regarded as a constituting a “menace”<sup>4</sup> and most certainly did not take part. The USSR did not join the League of Nations until 1934.<sup>5</sup>

Weimar Germany's army was limited to 100,000 men by the Treaty of Versailles, which also forbade the Germans to have aircraft, tanks, submarines, heavy artillery, poison gas, anti-tank weapons or many anti-aircraft guns. A team of inspectors from the League of Nations patrolled many German factories and workshops to ensure that these weapons were not being manufactured.

Relations between Germany and Soviet Russia did not start well.

The political scientist Ernst Fraenkel<sup>6</sup> who emigrated to the USA in 1939 published in 1940 a survey of German- Soviet relations during this period.<sup>7</sup> He pointed out that the Russian ambassador, Adolph Joffe, was expelled from Germany early in November 1918, for conspiracy with German communists. The first German Ambassador to Soviet Russia, Wilhelm von Mirbach, was shot dead by Russian Left Socialist-Revolutionaries in an alleged attempt to incite a new war between Russia and Germany. His successor, the well-known German politician Karl Helfferich, left Moscow after a few days. Thus, neither legal nor diplomatic relations between Germany and Soviet Russia existed until May 1921.<sup>8</sup> On 5 May 1921, a commercial agreement between them was signed. The political significance of this treaty consisted in the act of signing it. By acknowledging the Soviet government as the legal representative of the territory it controlled, Germany repudiated any participation in the Russian civil war.

Fraenkel observed that the commercial treaty was planned and drafted by the chief of the Eastern Department of the German Foreign Office, Baron von Maltzan, the head of the "Eastern School" of post-war German diplomacy. He also prepared the next step: the Rapallo

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<sup>4</sup> Charles Noble Gregory ‘The First Assembly of the League of Nations’ *American Journal of International Law* 15(2) (1921) 240-266 – the word “menace” was used by him on pages 242 and 246

<sup>5</sup> Yeltsin Presidential Library ‘USSR joins the League of Nations’, available at <http://www.prilib.ru/en-us/History/Pages/Item.aspx?itemid=666>

<sup>6</sup> 1898-1975

<sup>7</sup> Ernst Fraenkel, ‘German-Russian Relations Since 1918: From Brest-Litovsk to Moscow’ 2(1) (1940) *The Review of Politics*, 34–62

<sup>8</sup> Ibid p.36

Treaty of 24 April 1922. In the next section I turn to the composition of the Soviet Russian delegation.

### 3. Yevgeniy Pashukanis<sup>9</sup>

Rapallo is of interest for another reason. That was the participation, as a Legal Adviser, of Yevgeniy Pashukanis.

Pashukanis was the best-known and most interesting legal theoretician of the early USSR. He was born in 1891. In 1909 he started to study law in Petersburg, but left Russia for Germany in 1910. He continued his studies at the Ludwig-Maximilians-Universität in Munich, where he specialized in the contemporary philosophy of law, and in political economy. His dissertation was entitled *Statistik der Gesetzwidrigkeit im Arbeitsschutz* (Statistics of legal infractions in labour protection). This was not at all, therefore, a work of legal theory, but an indication of his interest in the workers' movement in Germany.<sup>10</sup> During World War I, he returned to Russia.

In October 1917, following the Bolshevik seizure of power, Pashukanis worked in the Sushchevsko-Mariynskiy Military Revolutionary Committee in Moscow, and was later elected a member of the Cassation (Appeal) Tribunal attached to the All-Russian Central Executive Committee (VTsIK)<sup>11</sup>, acting as a revolutionary judge.<sup>12</sup>

From 1920 to 1923 Pashukanis served in the Peoples' Commissariat for Foreign Affairs as the deputy head of the Economic Law Department. As a legal adviser, he was involved in one of first and most important actions of the young Soviet Union in the field of international law.

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<sup>9</sup> See 'The trajectory of Yevgeniy Pashukanis and the struggle for power in Soviet law', and 'Soviet international law and self-determination', Chapters 4 and 5 in Bill Bowring *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power* (Abingdon: Routledge 2013), 48-76, and 77-95

<sup>10</sup> Andreas Diers 'Opfer des 'Grossen Terrors': Eine biographische werknotiz zum 75. Todestag von Eugen Paschukanis' (Victim of the 'Great Terror': a biographical note for the 75<sup>th</sup> anniversary of the death of Yevgeny Pasukanis), 3 September 2012, at

[https://www.rosalux.de/fileadmin/rls\\_uploads/pdfs/sonst\\_publicationen/Paschukanis\\_Sept\\_2012.pdf](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/sonst_publicationen/Paschukanis_Sept_2012.pdf); see also Andreas Harms *Warenform und Rechtsform. Zur Rechtstheorie von Eugen Paschukanis* (Commodity form and legal form. On the legal theory of Yevgeny Pashukanis) Freiburg: ça ira Verlag, Neuauflage 2009

<sup>11</sup> These courts were established by the Decree of November 22 (December 5) 1917 "On the Court": Decree of the Council of People's Commissars SU 1917-1918, No.4, item 50. English translation in Zigurds L. Zile (ed) *Ideas and Forces in Soviet Legal History: A Reader on the Soviet State and Law* (Oxford: Oxford University Press, 1992), 95-96

<sup>12</sup> Yevgeniy Pashukanis (1922) "Pervye mesiatsy sushchestvovaniy moskovskogo narodnogo suda (The First Months of the Existence of the Moscow People's Court)" 1922 Nos 44-45 *Yezhenedelnik Sovetskoi Iustitsii* (Soviet Justice Weekly) 15-16; see also Pyotr Stuchka (1918) "Stariy i noviy sud (The Old and New Court)", English translation at Zile Ibid, 96-98

During this time he worked in the Soviet Russian representation in Berlin, where in due course he took part in the preparation of the Rappalo Treaty with Germany. Indeed, on 3 December 1921 he was the author of a telegram to Georgy Chicherin, People's Commissar for Foreign Affairs, on the vexed question of “prize ships”, and styled himself *временного поверенного* (*vremennovo poverennovo*), Chargé d'Affaires.<sup>13</sup>

In her monumental account of European history following World War I, Zara Steiner analysed the context of this work.<sup>14</sup> She started with the provisional Russo-German trade agreement of May 1921.<sup>15</sup> According to her, “[it] was Lenin who plotted the strategies pursued at the forthcoming Genoa conference (10 April -19 May 1922), Lloyd George’s grand design for the reconstruction of Europe”<sup>16</sup>, and Lenin personally recruited the members of the negotiating delegation<sup>17</sup>, which included Georgy Chicherin<sup>18</sup>, who served as People's Commissar for Foreign Affairs in the Soviet government from March 1918 to 1930, Maxim Litvinov<sup>19</sup>, the deputy chief of the Commissariat of Foreign Affairs, and the former organiser of Bolshevik bank robberies, Leonid Krasin<sup>20</sup>. None of them, unlike Pashukanis, were victims of Stalin’s repression.

According to Steiner, “It was in the hope of strengthening their negotiating hand that Chicherin and Litvinov stopped in Berlin in early 1922 on their way to Genoa.”<sup>21</sup> There they worked very closely with Pashukanis on a number of issues, not only Genoa and Rapallo. Indeed, the multi-volume *Dokumenty vneshnei politiki SSSR* (Documents of the foreign policy of the USSR – the *Documents*) contains a letter dated 17 March 1922 from Maxim Litvinov to Yevgeny Pashukanis advising him as to how to deal with the reactionary

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<sup>13</sup> *Sovetsko-germanskkiye otnosheniya ot peregovorov v Brest-Litovske do podpisaniya Rapallskovo dogovora. Sbornik dokumentov.* (Soviet-German relations from the negotiations in Brest-Litovsk to the signing of the Rapallo Treaty. Collected documents.) In two volumes. (Moscow: Politizdat 1968-1971) Vol 1: 1917-1918. Vol 2: 1919-1922. At

<http://militera.lib.ru/docs/da/sov-german/index.html>, Document No.236. *Telegramma vremennovo poverennovo v delakh RSFSR v Germanii narodnomu komissaru inostrannikh del RSFSR G V Chicherin* (Telegram from the Chargé d’Affaires in Germany to the people’s commissar of foreign affairs of the RSFSR G V Chicherin) 3 December 1921, № K292

<sup>14</sup> Zara Steiner *The Lights that Failed: European International History 1919-1933* (Oxford: Oxford University Press 2005)

<sup>15</sup> Ibid 161

<sup>16</sup> Ibid 163

<sup>17</sup> Ibid 164

<sup>18</sup> Georgy Vasilyevich Chicherin, 1872-1936, born into an old noble family (related to Pushkin), father was a diplomat, in 1904 transferred his family wealth to the Bolsheviks, was personally very close to Lenin

<sup>19</sup> Maxim Maximovich Litvinov, 1876-1951, born Meir Henoah Wallach-Finkelstein

<sup>20</sup> Leonid Borisovich Krasin, 1870-1926, died in London of a blood disease, 6000 mourners attended his funeral at Golders Green Crematorium

<sup>21</sup> Ibid 165

government of Admiral Miklós Horthy, who came to power after the downfall in 1920 of the short-lived Hungarian Soviet Republic.<sup>22</sup>

In 2001 the Russian historian of Germany G. M. Sadovaya published *Walter Rathenau and the Rapallo Treaty*.<sup>23</sup> She relates that in February 1922 Soviet-German negotiations started again. However, the Germans did not want to talk about credits for the RSFSR<sup>24</sup> referring to their own need for money and their anxiety about interference from the Reparations Commission.

But contacts continued. Sadovaya notes that Karl Radek participated in these discussions, together with the representative of Soviet Russia in Germany N. N. Krestinsky, the chairman of the Ukrainian SSR, Kh. G. Rakovsky, and the trade representative of the RSFSR in Berlin, B. S. Stomonyakov<sup>25</sup>, with his adviser, Yevgeny Pashukanis. Information about the negotiations in January-February 1922 can be found in a number of sources: the letter of G. V. Chicherin of 10 April summarising what was going on; the account of “the Soviet diplomat Ye. V. Pashukanis” and other sources.<sup>26</sup>

Sadovaya relates that on the evening of 1 April 1922 there was a crucial meeting of the Soviet delegation with Radek, Stomonyakov and Pashukanis.<sup>27</sup> They decided to separate negotiations concerning political recognition, from negotiations about possible loans for the RSFSR. It was necessary to include in the political agreement the restoration of diplomatic relations and full mutual withdrawal of claims, including any claims for reparations for damage done to Germany in Russia in the course of nationalisation. It is plain that Pashukanis as Adviser to the Soviet Russian diplomats played a key role in arriving at this decision.

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<sup>22</sup> *Dokumenty vneshnei politiki SSSR*. (1961), *Moskva (Documents of the foreign policy of the USSR Volume 5, 1 January 1922 – 19 November 1922 Moscow: Politicheskoi Literatury*, 1961, 156-7, Document No.87

<sup>23</sup> G. M. Sadovaya (2001) *Valter Ratenau i Rapallskiy Dogovor* (Samara: *Samarskiy Universitet* 2001, available at <http://refy.ru/71/248883-g-m-sadovaya-valter-ratenau-i-rapallskiy-dogovor.html>

<sup>24</sup> Russian Socialist Federation of Soviet Republics (RSFSR) – Soviet Russia

<sup>25</sup> Boris Spiridonovich Stomonyakov (1882 to 1940), was an ethnic Bulgarian anti-Tsarist revolutionary who later became a trade representative and diplomat for the USSR the 1920s and 1930s. He was arrested in 1938 and shot in 1940.

<sup>26</sup> Sadovaya draws extensively from *Sovetsko-germanskkiye otnosheniya ot peregovorov v Brest-Litovske do podpisaniya Rapallskovo dogovora. Sbornik dokumentov*. (Soviet-German relations from the negotiations in Brest-Litovsk to the signing of the Rapallo Treaty. Collected documents.) In two volumes. (Moscow: *Politizdat*, 1968-1971). Vol 1: 1917-1918. Vol 2: 1919-1922. At <http://militera.lib.ru/docs/da/sov-german/index.html>

<sup>27</sup> Sadovaya *Valter Ratenau* 2001 (n.23), 56

A detailed account of this meeting was given by Pashukanis in his Telegram of 5 April 1922 “from the Adviser of the Representation of the RSFSR in Germany to the Peoples Commissariat of Foreign Affairs RFSFR”.<sup>28</sup> This is also to be found online.<sup>29</sup>

The Soviet delegation focused its energy on the attempt to get everything signed before leaving for Genoa. Pashukanis wrote that this question was raised at breakfast with Rathenau and in meetings which took place for almost the whole day on 3 April, from 10 am to 5 pm. In discussion with Rathenau, wrote Pashukanis, a compromise formula began to take on more defined and correct – for the Russian delegation – features. Namely, in the agreement it must be stated that Germany relinquishes all claims relating to nationalisation, on condition that the Soviet Russian side rejected similar claims of other states.

#### **4. The impact and consequences of the Treaty of Rapallo**

Indeed, the result of the astute brinkmanship of the Soviet Russian delegation, was what Steiner described as a “bombshell”, especially for Lloyd George.<sup>30</sup>

Carole Fink also emphasised the crucial importance of the preliminary negotiations in Berlin.<sup>31</sup> She noted<sup>32</sup> that “At 6.30 pm on 16 April [1922], the foreign ministers of Germany and Russia signed the “Rapallo Treaty”... Contrary to the Allies’ programme for Genoa, Germany had accorded Soviet Russia full and unconditional recognition.” She continued “The treaty represented a lopsided Soviet victory, caused by a combination of deceitfulness and ambition. Litvinov gloated to Moscow: “Our semi-private talks with the Supreme Council [sic] aroused fears in the minds of the Germans, and Rathenau, neither alive nor dead, came running to us yesterday and proposed right on the spot the same agreement which he refused to sign during our stay in Berlin.”<sup>33</sup>

Pashukanis was one of the authors of this success

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<sup>28</sup> *Documents Foreign Policy* 1961 (n.22), 184-5

<sup>29</sup> *Soviet-German Relations* 1968-1971 (n.26) Volume 2, Document No. 258. Из письма советника представительства РСФСР в Германии заместителю народного комиссара иностранных дел РСФСР Л. М. Карахану, 8 апреля 1922 г., № 438 (From the letter of the adviser to the representation of the RSFSR in Germany to the deputy commissar for foreign affairs of the RSFSR L M Karakhan, 8 April 1922, No.438, available at <http://militera.lib.ru/docs/da/sov-german/index.html>

<sup>30</sup> Steiner *Lights* 2005 (n.14), 166

<sup>31</sup> Carole Fink *The Genoa Conference: European Diplomacy, 1921-1922*, Syracuse: Syracuse University Press, 1993 (first published 1984), 126

<sup>32</sup> Ibid 173-4

<sup>33</sup> *Documents Foreign Policy* 1961 (n.22) Vol 5. 226. Intercepted by the British: LGP F26/1/30. No 123, telegram, 17 April 1922, p.226. See Chicherin’s telegram 4 April 1922, No.101, p.181; Pashukanis’s letter 8 April 1922, No.106, pp.188-190, Chicherin’s letter 10 April 1922, no.110, p.202-207



## 5. Contemporary evaluation of Rapallo

In 1922 the Treaty of Rapallo was mentioned in the *American Journal of International Law* as follows: “Political treaty signed at Rapallo by which Germany recognized the Soviet government *de jure*: German claims in respect to private property nationalized by Bolsheviks were waived; German and Russian debts were mutually cancelled, diplomatic relations were renewed, etc.”<sup>34</sup>

The Treaty of Rapallo was strictly speaking a by-product of the Genoa Economic Conference, signed by Walter Rathenau and Georgy Chicherin at the Hotel Imperiale in the Italian city of Genoa on 16 April 1922 between Germany and Soviet Russia.

According to Articles I and II of the Treaty, all mutual claims between the two countries were annulled; Article III restored full diplomatic relations; Article IV introduced the most favoured nation clause into the commercial dealings of the two parties; and in Article V the German government declared its readiness to encourage trade between German industry and Soviet Russia.<sup>35</sup>

On 5 November 1922 a Supplementary Agreement was signed by “the plenipotentiary of the German Government, namely Freiherr von Maltzan, Permanent Under-Secretary for Foreign Affairs; the plenipotentiary of the Socialist Soviet Republic of the Ukraine, namely, Herr Waldemar Aussem, Member of the Central Executive Committee for all Ukraine, and also the plenipotentiary of the Government of the Socialist Soviet Republic of White Russia, the Socialist Soviet Republic of Georgia, the Socialist Soviet Republic of Azerbaijan, the Socialist Soviet Republic of Armenia, and the Republic of the Far East, namely Herr Nikolaus Krestinski, plenipotentiary and Ambassador of the Russian Socialist Soviet Republic in Berlin”.<sup>36</sup>

In his 1940 article referred to above, Ernst Fraenkel observed that

The Rapallo Treaty was the first big surprise created by German diplomacy in the post-war period. For some days the treaty, concluded during the Genoa Conference, was considered a threat to the European peace. The nightmare of a German-Russian

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<sup>34</sup> ‘Chronicle of International Events’ 16(3) (1922) *American Journal of International Law*, 467

<sup>35</sup> German-Russian Agreement; 16 April 1922 (Treaty of Rapallo), available at [http://avalon.law.yale.edu/20th\\_century/rapallo\\_001.asp](http://avalon.law.yale.edu/20th_century/rapallo_001.asp)

<sup>36</sup> Supplementary Agreement to the German-Russian Agreement (Treaty of Rapallo, April 16, 1922); November 5, 1922, available at [http://avalon.law.yale.edu/20th\\_century/rapallo\\_002.asp](http://avalon.law.yale.edu/20th_century/rapallo_002.asp)

war alliance appeared on the stage. Both countries were branded as saboteurs of the first attempt of the post-war period to establish a real peace.<sup>37</sup>

He continued:

The advantage realized by Germany and Russia was considerable. Both nations had demonstrated their independence; they boasted of having concluded the only treaty worthy of being called a "peace" treaty in the post-war period. The resolution of the All-Russian Central Executive Committee, May 18, 1922, reads:

"The All-Russian Central Executive Committee welcomes the German-Russian treaty concluded at Rapallo as the only true issue from chaos and the danger of war, recognizes no other type of treaty as normal for relations between the R.S.F.S.R. and the capitalist states."<sup>38</sup>

Pashukanis' rival, Yevgeniy Korovin, published an article in the American Journal of International Law in 1928, "Soviet Treaties and International Law"<sup>39</sup>. On the question of Rapallo, Korovin focused first on the Treaty of Rapallo for its "most favoured nation clause".<sup>40</sup>

Article 16 of the provisional Russo-German agreement of May 6, 1921, proclaims "the spirit of mutual benevolence which should strengthen economic ties." Articles 8 and 9 guarantee Russian citizens "the prescriptions of international law and of the German common law." Comparing this convention with Article 4 of the Treaty of Rapallo (April 16, 1922), making provisions for the application of the principle of the most favoured nation to the laws affecting foreigners and to the commercial relations of the two states, we find, in Article 4, that the clause becomes operative only from the day of the ratification of this diplomatic instrument, which is sufficient evidence that this principle had, prior thereto, been absent.

He emphasised in conclusion<sup>41</sup> the memorial presented by the Soviet Delegation, setting out the principles of the Soviet side. This is worth setting out *in extenso*:

In the memorial presented by the Soviet Delegation at Genoa, April 20, 1922, is set forth the following thesis:

The revolution of 1917, having completely destroyed all the old relationships, economic, social and political, and having replaced the old social order (class divisions) by the new social order, the sovereignty of an insurgent people, turning over the power of the Russian State to a new social class, did by this fact break the succession of those civil obligations which were component elements of the economic relations of the social order now extinct.

<sup>37</sup> Fraenkel 'German-Russian Relations' 1940 (n.7) 36

<sup>38</sup> Ibid 38

<sup>39</sup> Eugene Korovin "Soviet Treaties and International Law" 22(4) (1928) *The American Journal of International Law* 753-763 original in Russian 'Sovetskiye dogovory i mezhdunarodnoye pravo (1927) No. 6 *Sovetskoye Pravo* (Soviet Law), 763

<sup>40</sup> Ibid, 755

<sup>41</sup> Ibid

The train of argument adopted by the Soviets is somewhat as follows: Every international agreement is the expression of an established social order, with a certain balance of collective interests. So long as this social order endures, such treaties as remain in force, following the principle, *pacta sunt servanda*, must be scrupulously observed. But if in the storm of a social cataclysm one class replaces the other at the helm of the state, for the purpose of reorganizing not only economic ties but the governing principles of internal and external politics, the old agreements, insofar as they reflect the pre-existing order of things, destroyed by the revolution, become null and void. To demand of a people at last freed of the yoke of centuries the payment of debts contracted by their oppressors for the purpose of holding them in slavery would be contrary to those elementary principles of equity which are due all nations in their relations with each other. Thus in this sense the Soviet Doctrine appears to be an extension of the principle of *rebus sic stantibus*, while at the same time limiting its field of application by a single circumstance – the social revolution.

Korovin seemed to have been anxious to show that the revolutionary Russian approach to international law could be understood within the traditional framework of international law. It is perhaps no accident that he did not acknowledge the crucial role played by his rival for leadership of Soviet international law, Yevgeny Pashukanis.

Moreover, it may well be that Pashukanis's experience as a responsible working diplomat, engaged in negotiation at the highest level, informed his later writing to a much greater extent than did his German-centred theoretical scholarship.

## 6. Pashukanis's scholarly work while in Berlin

However, as he disclosed rather later, in 1930, it was while in the Berlin in 1921-22, that Pashukanis prepared his *General Theory*, which was completed in 1923 and appeared in 1924. He also published his first scholarly article in 1921.

The Selected Works of Pashukanis published in Russia in 1980<sup>42</sup> has a Bibliography<sup>43</sup> of the "Fundamental Works of Pashukanis"; but one work is missing. This was Pashukanis' first published article, which appeared in 1921, and was entitled "*Burzhuazniy yurist o prirode gosudarstvo* (A bourgeois jurist on the nature of the state)".<sup>44</sup> It appeared in the literary journal *Krasnaya Nov* (*Red Virgin Soil*), which was the first Soviet literary "thick" journal, published between 1921 and 1941. From 1921 to 1927 it was edited by Aleksandr Voronkov

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<sup>42</sup> Yevgeniy Pashukanis *Izbranniye proizvedeniya po obshei teorii prava i gosudarstvo* (*Selected works on the general theory of law and state*) (Moscow: "Nauka" Publisher, 1980) – Academy of Science, Institute of State and Law

<sup>43</sup> Ibid, 261-267

<sup>44</sup> Yevgeniy Pashukanis '*Burzhuazniy yurist o prirode gosudarstvo* (A bourgeois jurist on the nature of the state)' 3 (1921) *Krasnaya Nov* (*Red Virgin Soil*) 223-232, available at <http://www.ruthenia.ru/sovlit/j/106.html>

(1884-1937), who was close to Trotsky, agreed with Trotsky's 1923 *Literature and Revolution*, did much to encourage new literary talent, and in 1937 was executed for Trotskyism.

The subject of the article was the scholarship of Professor Maurice Hauriou of the University of Toulouse (1856-1929)<sup>45</sup>, whose textbook on *Principles of Public Law* was published in 1910. Pashukanis did not refer in his 4,000 word article to any other literature. Not least in this regard, the article contrasts strongly with the *General Theory*, which has many references, including several to German authors. He referred to Marx, but without indicating his source. Most of the article consisted of often sarcastic references to Hauriou's positivist doctrine. Pashukanis' concluding paragraph was as follows.<sup>46</sup>

In one of his speeches Cde Lenin remarked that sincere defenders of capitalism may now be found only among our SRs (Social Revolutionaries) and Mensheviks. In the West they have become extinct. We can see the cause of this. Russia underwent an accelerated course of capitalism and therefore our intelligentsia may *bona fide* come out in defence of the sublime beginning of democracy and freedom, without sensing that it has been crucified by capitalism. But in order to be a sincere defender of capitalism in the West, where social relations have been able to mature and over-mature, one must sincerely, like Hauriou, assert that the principles of freedom, democracy, individual rights and so on, conceal behind themselves quite simply *faire valoir de la propriété!*<sup>47</sup> And such courage is not given to everyone.

There is in fact a connection between Pashukanis' sole publication before the *General Theory*, his 1921 article, and the 1924 *General Theory* itself, although Pashukanis did not refer directly to his earlier work. In fact, Maurice Hauriou was cited three times<sup>48</sup> in the *General Theory*, but this time with approbation and the epithet "astute" as in "one of the most astute bourgeois theorists"<sup>49</sup> and "an astute jurist like Hauriou".<sup>50</sup> And there are many references to the German legal scholars whom Pashukanis read in Munich and during his time in Berlin.

However, Pashukanis' paramount reason for writing the *General Theory* was not to renew or explain his relationship with Hauriou, but to identify "...law in its general definition, law as a

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<sup>45</sup> For biography see <http://www.universalis.fr/encyclopedie/maurice-hauriou/> He was a positivist, influenced by Aquinas, Comte and Bergson.

<sup>46</sup> Pashukanis *Bourgeois Jurist* 1921 (n.44), 231-232

<sup>47</sup> Enforce property!

<sup>48</sup> Pashukanis *General Theory* 1983 (n.1), 122, 123, 134

<sup>49</sup> Ibid 123

<sup>50</sup> Ibid 134

form...”.<sup>51</sup> That is, to tackle the question of the nature of law as a materially grounded abstraction. Pashukanis is now best known for his “commodity-form” theory of law, more recently extended to a “commodity-form theory of international law”.<sup>52</sup>

In the first of several recantations of his work in 1921, published in 1930, Pashukanis wrote the following about the genesis of the *General Theory*:

It is clear that much which was written in the first years of NEP<sup>53</sup> deserves criticism and suffers from obvious anachronisms and now and then simply mistakes... But the question is not only that of particular formulations. The question concerns some defects of a general character. This was the overestimation of the role and significance of market relations which was without doubt characteristic of my first work. It is impermissible to hide from view the fact that this book was written at a time when the collective of Marxist legal scholars had not come together. It was written when I was alone, and it could not be exposed to the process of critical re-working. It was written finally, before the publication of Lenin’s notebooks on dialectics and on the works of Marx which were published in the “Archive”. It appeared before the discussions with the “mechanists”, before the discussions in the fields of political economy, literature etc. Therefore it was completely natural, that the book, which was written in 1923, and prepared still earlier in 1920-1921, displays defects, when we look at it from our higher present day theoretical and methodological point of view.<sup>54</sup>

This concerned Pashukanis’ theoretical work from 1920 to 1923.

There was another side to Rapallo.

## **7. The secret military agreement at (or behind) Rapallo**

In 1922 Soviet Russia and Germany concluded a much more controversial and indeed secret agreement. The military historian Gordon Mueller wrote in 1976<sup>55</sup>:

This treaty commands our attention if only because it was the first of its kind to be signed by either of the two great outcast nations of Europe after Versailles. In April 1922, the effect of the treaty exploded like a bombshell on European nations. The political and psychological shock of the treaty was heightened by rumors running

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<sup>51</sup> Ibid, 68

<sup>52</sup> For a recent exposition and defence of this theory, see China Miéville ‘The Commodity-Form Theory of International Law: An Introduction’ 17(2) (2004) *Leiden Journal of International Law*, 271-302, and China Miéville *Between Equal Rights: A Marxist Theory of International Law* (Leiden: Brill Academic Publishers, 2005)

<sup>53</sup> The New Economic Policy, a partial restoration of capitalist market relations, under state control, was introduced by Lenin in 1921. Despite Lenin’s death in 1924 the success of the policy meant that it continued until sharply reversed by Stalin in 1928.

<sup>54</sup> Yevgeniy Pashukanis (1930) “*Polozheniye na teoreticheskom pravovom fronte (The situation on the theoretical legal front)*” 11-12 (1930) *Sovetskoye gosudarstvo i revoliutsiya prava* (Soviet state and revolution of law), 16-49, 26

<sup>55</sup> Gordon H. Mueller ‘Rapallo Reexamined: A New Look at Germany’s Secret Military Collaboration with Russia in 1922’ 40(3) (1976) *Military Affairs*, 109-117, 109

rampant through Genoa and the world that Rapallo included a secret military agreement.

Mueller provided convincing evidence that there was indeed a secret military agreement between the Soviet Union and Germany.

... the Reichstag expose of December 1926 publicly confirmed that the Reichswehr and German industry had indeed been secretly cooperating for some years.

Mueller contended that “even without the Rapallo connection, Germany's entire military relationship to Russia, already in 1922, was far more extensive, more politically involved, and more important than previously thought.” The text of the reported military convention between Soviet Russia and Germany was published at Riga and reprinted in the London Times on 6 May 1922, and Mueller reproduced it as Appendix 1 to his very thoroughly referenced article.<sup>56</sup> He concluded:

In summing up the arguments for a secret military agreement connected with Rapallo, we can say the following. Secret military and armament agreements with Russia were concluded both before and after Rapallo was signed but could easily have received some semi-official recognition in the treaty itself. Certainly, the bulk of the evidence favors some relationship of Rapallo to these subterranean military arrangements, a relationship so carefully guarded that to this very day mystery obscures many of the details.<sup>57</sup>

Hans Gatzke in his 1958 study of Russo-German military collaboration<sup>58</sup>, drawing on contemporaneous letters and other materials, discounted the idea of a secret treaty at Rapallo, but reported on negotiations whose purpose “... was to reach some agreement by which Germany would provide financial and technical aid in building up Russia's armament industry (with possible concessions to German firms, such as Junkers and Krupp) and obtain from Russia the necessary artillery ammunition that she was prohibited from manufacturing under the Treaty of Versailles.<sup>59</sup>” He therefore contended that “... there is evidence that the German military, in their simultaneous negotiations with Russia, were going far beyond what their government was ready to concede”.<sup>60</sup> He concluded that “If there is one thing the German documents show, it is the fact that the whole German government and not merely its military branch was actively involved in the collaboration with Russia.”<sup>61</sup>

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<sup>56</sup> Ibid, 113

<sup>57</sup> Ibid, 113

<sup>58</sup> Hans W. Gatzke (1958) “Russo-German Military Collaboration During the Weimar Republic” 63(3) (1958) *The American Historical Review*, 565-597

<sup>59</sup> Ibid, 568

<sup>60</sup> Ibid, 569

<sup>61</sup> Ibid, 595

In 1928 Yan Karlovich Berzin, a Latvian (Latvian name *Jānis K. Bērziņš*) Soviet military intelligence officer<sup>62</sup> wrote a top secret report on “cooperation with Germany”.<sup>63</sup> This confirmed the very extensive cooperation between the Reichswehr and the Red Army, and contracts with the Junkers firm for military planes as well as the construction of aviation factories in Russia, and contracts from the Reichswehr for the mutual construction of factories for the manufacture of mustard gas.

More information on the secret military side of Rapallo has been set out, with considerable detail, in a book published in Russia in 2000, *The German Contribution in the History of Russian Aviation*.<sup>64</sup> The chapter “The Lipetsk secret aviation school” has been published on the internet.<sup>65</sup> According to the authors, the first step was taken under Lenin in 1920 when the German authorities approached the Soviet Russian government with a proposal for the establishment on Russian territory of German military flying courses. The Politburo approved, save that rather than Moscow the training should take place in a provincial city. The Bolsheviks wanted to take advantage of German military experience and also modern technology. Above all, the Soviet leadership wanted to attract German industrialists to restore Russia’s military potential.

On 11 August 1922, soon after the signing of the Rapallo Treaty, a secret agreement was signed by the Reichswehr and the Red Army for cooperation. Germany was able to organise in Russia the testing of military equipment and training of personnel forbidden by the Versailles Treaty, and the Germans promised to export equipment to Russia and, most importantly, to participate in the testing of new German aircraft, tanks and chemical weapons.

German specialists arrived in Russia in 1924, and in June 1925 the steamship ‘Hugo Stinnes IV’ sailed from Stettin to Leningrad with 50 crates containing Fokker D XIII fighters, delivered to the air training school in Lipetsk. Cooperation continued until 1933.

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<sup>62</sup> 1889, shot as a Trotskyist in 1938, rehabilitated in 1956, and a postage stamp was issued with his image in 1989

<sup>63</sup> This has now been published within an internet resource “History of Russia”, at [http://www.hrono.ru/dokum/192\\_dok/ber\\_doc.html](http://www.hrono.ru/dokum/192_dok/ber_doc.html). Its reference is Начальник IV Управления штаба РККА Берзин, ЦГАСА. Ф. 33987. Оп. 3. Д. 295. Л. 71 - 78. Подлинник, *Nachalnik IV Upravleniye shtaba RKKA Berzin, TsGASA. F. 33987. Op. 3. D. 295. L. 71-78. Podlinnik*.

<sup>64</sup> D. A. Sobolev and D. B. Khazanov *Nemetskiy sled v istorii otechestvennoi aviatsii* (The German legacy in the history of national aviation) (Moscow: “Russian Aviation Limited Company” (RUSAVIA) 2000)

<sup>65</sup> ‘*Lipetskaya sekretnaya aviashkola*’ (‘The Lipetsk secret aviation school’), available at <http://www.airpages.ru/dc/lipetsk.shtml>. The internet source does not give page numbers.

Another, very controversial, contribution to scholarship concerning the secret Rapallo agreement, appeared in Russia in 1992<sup>66</sup> and was published in English in 1995, entitled *The Red Army and the Wehrmacht: How the Soviets militarized Germany, 1922-1933, and paved the way for Fascism (From the Secret Archives of the Former Soviet Union)*.<sup>67</sup> According to the authors, the documents reveal that the foundation of Hitler's army was put together with the cooperation of the upper echelon of the Red Army and the Soviet Politburo, including Lenin, Trotsky, and Stalin. This unspoken alliance, which changed the course of world history, has remained a secret - until now, they say. The authors believed that they make a convincing case that had it not been for Soviet aid, Hitler's military buildup would not have been possible and World War II might well have been averted. But from 2004 onwards their thesis – a classic conspiracy theory - has come in for considerable critical attention.<sup>68</sup>

On balance, the agreement is likely to have benefited Soviet Russia at least as much as it did Germany. As the Soviet Russians anticipated, they gained access to modern technologies and methods.

## 8. Pashukanis's later trajectory

Pashukanis became in the next ten years a staunch loyalist of the regime – in my opinion, by conviction rather than any sort of pressure.

In 1931, following the dramatic recantation of his previous views noted above, Pashukanis became the Director of the Institute of Soviet Construction and Law of the Communist Academy. He was effectively the USSR's director of legal research and legal education. The

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<sup>66</sup> Yu. L. Dyakov, T. S. Bushuyeva *Fashistskiy mek kovalsya v SSSR (The fascist sword was forged in the USSR)* (Moscow: Sovetskaya Rossiya 1992)

<sup>67</sup> Yuri Dyakov and Tatyana Bushuyeva *The Red Army and the Wehrmacht: How the Soviets militarized Germany, 1922-1933, and paved the way for Fascism (From the Secret Archives of the Former Soviet Union)* (Amherst NY: Prometheus Books 1995)

<sup>68</sup> Russian critical responses include Yuriy Pikhlov "Who forged the fascist sword?" available at [http://www.situation.ru/app/j\\_art\\_413.htm](http://www.situation.ru/app/j_art_413.htm) (2004) and <http://statehistory.ru/53/Kto-koval-fashistskiy-mech-/>, (2009); Andrei Rakovsky (2008) available at [http://wiki.istmat.info/%D0%BC%D0%B8%D1%84:%D1%84%D0%B0%D1%88%D0%B8%D1%81%D1%82%D1%81%D0%BA%D0%B8%D0%B9\\_%D0%BC%D0%B5%D1%87](http://wiki.istmat.info/%D0%BC%D0%B8%D1%84:%D1%84%D0%B0%D1%88%D0%B8%D1%81%D1%82%D1%81%D0%BA%D0%B8%D0%B9_%D0%BC%D0%B5%D1%87;); Viktor Suvorov (2007) "When and where was the fascist sword forged?" available at <http://ledokol-ru.livejournal.com/79695.html>



American scholar John Hazard<sup>69</sup>, who studied under Pashukanis from 1934 to 1937, summarised his effect on legal education, as follows:<sup>70</sup>

Believing that the state was slowly withering away as socialism came nearer to achievement, Pashukanis advocated the cessation of courses in civil law. He understood civil law to be the regulation of the relations of men under the trading conditions of capitalism, and, as such, no longer of importance, as the remnants of capitalism disappeared.

His influence was so marked that the courses in civil law in the law school were abolished, and to replace them there appeared a course called economic-administrative law, concerning itself with regulation of the relations between state enterprises.<sup>71</sup>

Following Pashukanis' fall in 1937, courses on (Soviet) civil law were reintroduced to the syllabus.

By 1932, Pashukanis, who had become editor in chief of the official law journal *Soviet State*, was able to write a "hallelujah" in response to Stalin's letter "Some questions on the history of Bolshevism".<sup>72</sup> Pashukanis' major work on international law, *Essays in International Law*, appeared in 1935<sup>73</sup>.

Most copies of the *Essays* were destroyed after he was denounced in 1937, but in this culminating work he declared that any attempt to define the "nature of international law" was scholastic.<sup>74</sup> In his view, such attempts were the result of the continuing influence of bourgeois legal methodology, which, he said, rested on the association of law with substance developing in accordance with its own internal principles. For him, in 1935, international law was a means of formulating and strengthening, in custom and treaties, various political and economic relationships between states; the USSR could use international law to further Soviet interests in the struggle with capitalist states. He saw no reason to believe that in using these principles of international law for its own purposes the USSR was compromising its

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<sup>69</sup> 1909-1955

<sup>70</sup> John Hazard 'Housecleaning in Soviet Law' 1 (1938) *American Quarterly on the Soviet Union* pp.5-16, at <http://www.unz.org/Pub/AmQSovietUnion-1938apr-00005?View=PDF>; and John Hazard 'Cleansing Soviet International Law of Anti-Marxist Theories' 32(2) (1938) *American Journal of International Law*, 244-252

<sup>71</sup> Hazard *Housecleaning* 1938 (n.70) 13

<sup>72</sup> Ye Pashukanis 'Pismo tov. Stalina i zadachi teoreticheskovo fronta gosudarstvo i pravo (The letter of comrade Stalin and the tasks of the theoretical front of state and law)' 1 (1932) *Sovetskoe gosudarstvo* (Soviet State) 4-48, cited in E. A. Skripilev, 'Nashemy zhurnal - 70 let' (Our journal is 70 years old)' no. 2 (1987) *Sovetskoye Gosudarstvo i Pravo* (Soviet State and Law) 17.

<sup>73</sup> Ye. Pashukanis, *Ocherki po Mezhdunarodnomu Pravu* (*Essays in International Law*) (Moscow: Soviet Legislation, 1935)

<sup>74</sup> Cited (16) in John Hazard 'Pashukanis is No Traitor' 51(2) (1957) *American Journal of International Law*, 385-388, 387.

principles, in a world in which most states were capitalist. For Pashukanis there was no point in seeking to determine whether international law was “bourgeois” or “socialist”; such a discussion would be “scholastic”.<sup>75</sup>

The entry on International Law was included in full as an Appendix in China Miéville’s *Between Equal Rights*, which is probably the most notable contemporary rehabilitation of Pashukanis.<sup>76</sup> However, Miéville noticed that in contrast to the *General Theory*, Pashukanis seemed “to accept the existence of antique international law, and to deny its historical particularity.”<sup>77</sup> That is, it would appear that there is no law as such until capitalism, and only private law; but there has been international law throughout recorded history. Pashukanis rejected the positivist arguments of Austin and others that without a sovereign there can be no international law. Even for the young USSR there could be international law:

The formalization of our relationship with bourgeois states, by way of treaties, is part of our foreign policy, and is its continuation in a special form. A treaty obligation is nothing other than a special form of the concretization of economic and political relationships. But once the appropriate degree of concretization is reached, it may then be taken into consideration and, within certain limits, studied as a special subject. The reality of this object is no less than the reality of any constitution – both may be overturned by the intrusion of a revolutionary squall.<sup>78</sup>

Pashukanis, unlike later Soviet jurists, did not oppose the existence of customary international law as a source of international law, which, he said, was “...the totality of norms regulating the relationships between states.”<sup>79</sup> He continued: “To the extent that states have no external authority above them which could establish their norms of conduct, then in the technical legal sense the sources of international law are custom and treaty.”<sup>80</sup>

This was noted in 1970 by G. I. Tunkin, the leading international legal scholar of the late Soviet period, who gave these passages of Pashukanis as evidence that Soviet international law had not rejected general (customary) international law.<sup>81</sup> Tunkin pointed out that when

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<sup>75</sup> Ibid 387.

<sup>76</sup> China Miéville *Between Equal Rights: A Marxist Theory of International Law* (Leiden: Brill Academic Publishers, 2005) Appendix, 321-336

<sup>77</sup> Ibid, 160; and see Piers Beirne and Robert Sharlet (eds) *Pashukanis: Selected Writings on Marxism and Law* (London and New York: Academic Press, 1980), 175

<sup>78</sup> Beirne and Sharlet *Pashukanis*, (1980) 181

<sup>79</sup> Ibid (1980) 168

<sup>80</sup> Ibid (1980) 181

<sup>81</sup> G. Tunkin *Leninskiye printsipi ravnopraviya i samoopredeleniya narodov i sovremennoye mezhdunarodoye pravo* (Lenin’s principles of equal rights and the self-determination of peoples in contemporary international law) 2 (1970) *Vestnik Moskovskogo Universiteta* (Bulletin of Moscow University) 62-71, n. 34 and n. 35

Pashukanis in 1935 stated that with the help of international law the bourgeois states “divide the loot”<sup>82</sup>, this was the “old”, pre WWII international law.<sup>83</sup>

Pashukanis, as an international legal practitioner, an author of the Rapallo Treaty, was perfectly comfortable with orthodox conceptions of international law.

On 16 November 1936 Pashukanis reached the high point of his career: the Presidium of the Central Executive Committee of the USSR appointed him Deputy Peoples Commissar for Justice of the USSR. In the same year he was deputy chairman of the Drafting Committee for the 1936 “Stalin Constitution”<sup>84</sup>, and the Institute of State and Law proposed him as a candidate for membership of the Academy of Science of the USSR. Also in 1936 he became the chairman of the Academic Council attached to the Peoples Commissariat of Justice of the USSR.

But within a year he was dead, following *Pravda*’s announcement on 20 January 1937 that he had been found to be an enemy of the people – just two months after he had been named by the regime to supervise the revision of the whole system of Soviet codes of law. On the same day he was arrested. On 4 September 1937 a Military Collegium sentenced him to death. He was condemned as a member of a ‘band of wreckers’ and “Trotsky-Bukharin fascist agents”. He was posthumously rehabilitated in 1956.

## 9. Conclusion – the significance of Rapallo

I have referred above to some more contemporary evaluations of the Treaty of Rapallo. How do Russians now see the events of 1922 and the Treaty of Brest-Litovsk? The historian G. M. Sadovaya, in her 2001 book cited above, wrote that the Treaty of Rapallo created the legal basis for the establishment of multi-faceted relations between the two countries and above all for providing the basis for economic cooperation.<sup>85</sup> Their diplomatic relations were also regulated. The Soviet Russian government appointed its representative in Berlin with a new rank, of Plenipotentiary Ambassador. This was the Bolshevik revolutionary N. N.

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<sup>82</sup> Ye. Pashukanis “*Burzhuaaznoye gosudarstvo i problema suvereniteta* (The bourgeois state and the problem of sovereignty) 10 (1935) *Bulletin (Vestnik) of the Communist Academy*, 300-312, 309

<sup>83</sup> G. Tunkin *Theory of International Law* (translated by W. B. Butler) (London: George Allen & Unwin, 1974), 246

<sup>84</sup> John Hazard ‘Memories of Pashukanis’, Foreword to *Evgeny Pashukanis, Selected Writings on Marxism and Law* (London: Academic Press, 1980), 273-301 available at

<http://www.marxists.org/archive/pashukanis/biog/memoir.htm>

<sup>85</sup> Sadovaya Valter Ratenau 2001 (n.23), 113

Krestinsky<sup>86</sup>, who was already well known in Germany. On 2 August 1922 he presented his credentials, which he had received not from the head of a government but from the head of a state, to President Ebert of Germany. More than 100,000 German workers came to the Soviet Embassy, to welcome the Treaty and the official Soviet Russian presence in Berlin.

Sadovaya's conclusion as to the Treaty of Rapallo is as follows:

The Treaty has been called a phantom, an episode, a dream, a secret, a ghost, a bluff, an instrument of political tactics, it has been hinted that there was a military alliance between the two countries, emphasising that Russia used Germany, and so on... [in her view] it was never a minor tactical manoeuvre, but a great political conception, and never a secret alliance.<sup>87</sup>

In the history of Soviet and Russian approaches to international law, the Treaty of Rapallo is also inextricably linked to the professional activity and theoretical evolution of Yevgeniy Pashukanis, one of the most interesting, and tragic, leading actors of the inter-War period.

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<sup>86</sup> 1883-1938, a Bolshevik from 1903, supported Trotsky until 1928, and like Pashukanis a victim of Stalin's purges

<sup>87</sup> Sadovaya *Valter Ratenau* 2001 (n.23) 115